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HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.20717 OF 2005

DATED:21-09-2005

Between:

Mohd. Abdul Majeed.

..... PETITIONER

AND

The Commissioner, Municipal Corporation of Hyderabad,

and another.

.....RESPONDENTS

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HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.20717 OF 2005

ORDER:

The issue involved in this writ petition is squarely covered by the judgment of a Full Bench of this Court in ***M/s. Ushodaya Publications v. Commissioner***

Municipal Corporation, Hyderabad (FB).

Accordingly, this writ petition is allowed. A writ in the nature of Mandamus is issued directing the respondents to forbear from taking possession of the land-in-question without taking recourse to the provisions of the Hyderabad Municipal Corporation Act, 1955 or the Land Acquisition Act, 1894. No costs.

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21st September, 2005.

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The question which arises for consideration in this Writ Petition is as to whether the possession of a land in occupation of a lessee can be acquired by the Municipal Corporation of Hyderabad without recourse to compulsory acquisition only on the basis of the consent given by the landlady. The

petitioner herein is a company. It is a tenant of the premises No.6-3-569 and 570, Somajiguda, Hyderabad. One Smt. M. Ramanamma is the landlady of the said premises. The petitioner was granted lease in respect of the aforementioned premises for establishing a printing press in respect whereof it obtained licence from the Municipal Corporation of Hyderabad. The Inspector of Factories has also granted licence in favour of the petitioner. The Petitioner herein had also been published two dailies 'Eenadu and News Time' from the said premises. The building structures, hoards and the watchman room allegedly were constructed by the petitioner on leasehold land at its own cost. With a purpose of widening the road the 1st respondent threatened to take possession of the said premises purported to be on the basis of an alleged consent of the landlady without invoking the provisions of the Land Acquisition Act. A writ petition was filed by the petitioner which was marked as Writ Petition No.6294 of 1983 and by the judgment and order dated 14-09-1987 K. Ramaswamy, J. (as His Lordship then was) directed the respondent not to take possession except upon invoking the provisions of the Land Acquisition Act. The 1st respondent thereafter gave a notice on 09-09-1995 to the petitioner to surrender the land covered under the said premises in public interest free of cost whereupon the aforementioned direction of this Court was brought to his notice in terms of a letter dated 20-09-1995. Despite the same, on 09-01-1996 the 2nd respondent replied that its lessor Smt. M. Ramanamma gave consent and thereby the petitioner was called upon to vacate 144.16sq. yards of land adjoining the road after removing the compound wall and structures belonging to the petitioner. In the said letter they referred to the judgment passed by a division bench of this Court in Writ Appeal No.795 of 1993 disposed of on 05-08-1993 by way of justification of their action. Accordingly to the petitioner, however, the said judgment is not binding upon it having regard to the decision of K. Ramaswamy, J. in its case. The petitioner also asked for a copy of the purported consent letter issued by its landlady which was denied to it by the respondent in terms of his letter dated 30-01-1996. The petitioner thereafter issued another letter on 22-02-1996. In this writ petition the petitioner inter alia has prayed for the following reliefs:

"The petitioner prays the Honourable Court to be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring

the Notice No.94/TPS/ACP-V/MCH/W6/96 dated 25-03-1996 of the second respondent depriving the possession of site admeasuring 144.16 sq.yards in premises No.6-3-569 and 570, Somajiguda, Hyderabad including compound wall, security rooms and sign boards as null and void and to restrain the respondents from proceeding further except in accordance with the Land Acquisition Act as already held in W.P.No.6294/1983 dated 14-09-1987 and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the interests of justice.

It is therefore prayed that this Honourable Court may be pleased to stay all further proceedings in pursuance of notice issued by the respondents in Proc.No.94'TPS/ACP-V/MCH.W6/96, dated 25-03-1996 pending disposal of the above writ petition and pass such other orders or orders in the interests of justice."

2. The factual matrix of the matter as referred to herein is not denied and disputed.

3. Having regard to the importance of the question the matter was referred to a larger bench.

4. The learned counsel appearing on behalf of the petitioner inter alia submitted that the provisions of S.146 of the Hyderabad Municipal Corporation Act, 1955 lays down the procedure for acquisition of the land for the purposes referred to therein and thus the respondent-Corporation cannot make any attempt to dispossess the petitioner without acquiring the land in question.

5. The only question which arises for consideration in this writ petition is as to whether the petitioner can be deprived of its right to continue to possess its leasehold a land without taking recourse to the provisions of the said Act and/or the Land Acquisition Act. The answer to the said question must be rendered in negative. A lessee, as is well known, derives an interest in the corpus of the property by reason of the memorandum of lease granted in his favour. Such rights of the lessee are also enumerated in S.108 of the Transfer of Property Act. The owner of the land has transferred her right in relation to the properties in question subject to her right of reversion to recover possession thereof.

6. A State within the meaning of Article 12 of the Constitution of India can take

over possession and acquire title, right and interest in relation to the land only in exercise of its power of Eminent Domain. In Jilubhai Nanbhai Khachar v. State of Gujarat, AIR 1995 SC 142 the Apex Court has clearly held that the power of the State to acquire a property in exercise of its power of Eminent Domain remains. Article 300 A of the Constitution of India mandates that nobody would be deprived of his right of property except in accordance with law.

7. Having regard to the aforementioned constitutional protection granted to a person, the respondents were not statutorily entitled to take forcible possession of the land in question purported to be in terms of the alleged consent granted by its landlady. By reason of the provisions of the Transfer of Property Act the lessee derives a right to continue to occupy the leasehold premises subject of course to the terms and conditions o the lease and/or any statute governing the same.

8. Such a right of the lessee is a valuable right. In the event the property is acquired in terms of the provisions of the Land Acquisition Act, 1894, the petitioner, as a lessee, comes within the definition of 'person interested'' under S.3(b) of the Land Acquisition Act, as it is liable to be evicted otherwise than the provisions of law governing its lease.

9. The Hyderabad Municipal Corporation Act, 1955 is a self contained Code. At this juncture, it is appropriate to note the following provisions of the said Act.

"S.2 (28). "land" includes land which is being built upon or is built upon or covered with water, benefits to raise out of land, things attached to earth or permanently fastened to anything attached to the earth and rights created by the legislative enactment over any street.

S. 2 (39) "owner" means –

(a) when used with reference to any premises, the person who receives, the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were let and includes -

i. an agent or trustee who receive such rent on account of the owner,

ii. an agent or trustee who receives the rent of, or is entrusted with, or

concerned for, any premises devoted to religious or charitable or educational purposes;

iii. a receiver, sequestrator or manager appointed by any Court of competent jurisdiction to have the charge of or to exercise the rights of an owner of the premises; and

iv. a mortgage-in-possession; and

(b) when used with reference to any animal, vehicle or boat includes the person for the time being in charge of the animal, vehicle or boat;

S. 146. Acquisition of immovable property by agreement: - Whenever it is provided by this Act that the Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms at such rates or prices not exceeding such maximum as shall be approved by the Standing Committee, either generally for any class of cases or specially in a particular case.

(2) And whenever, under any provisions of this Act, the Commissioner is authorized to

Accordingly, the writ petition is allowed. No order as to costs.

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21st September, 2005.

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